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SUPREME COURT, U.S.

Case No. 81 6172

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM D. CHRISTOPHER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED

Whether during police custodial interrogation, a defendant has indicated "in any manner" his desire to remain silent (thus invoking his Fifth Amendment right against self-incrimination) when he said: (1) "then I got nothing else to say. If you're accusing me of murder, then take me down there;" (2) "I got nothing else to say;" (3) "what's the need of me saying anything then."

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OPINIONS BELOW

The opinion and judgment of the Supreme Court of Florida sought to be reviewed via this petition is not yet officially reported, but it is reproduced in the appendix as item 1. (A1-9)

JURISDICTION OF THE SUPREME COURT

The Supreme Court of Florida issued the opinion and judgment in this case on July 9, 1981. (A1-9) Petitioner filed a motion for rehearing (A10-12) which, except for some phraseology changes in its original opinion, the court denied. (A13) Petitioner asserted below and asserts here a deprivation of his rights as guaranteed under the United States Constitution. Title 28 United States Code, Section 1257(3) and Rule 17 of the United States Supreme Court Rules confers certiorari jurisdiction in this case to review the judgment in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime; unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life, or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. The Fourteenth Amendment to the United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of

the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On October 26, 1977 a Collier County, Florida grand jury indicted William D. Christopher, Petitioner, with two counts of first degree murder. (R1) Subsequently, the trial court denied a defense motion to suppress statements Christopher made when interrogated by the police. (R37-38,1297)

Christopher's first trial ended with a hung jury. (R2) He was re-tried on August 14-18, 1978, before the Honorable Charles T. Carlton, Circuit Judge of the Twentieth Judicial Circuit in and for Collier County, sitting in Glades County on a venue change. (R142) The jury returned its verdicts finding the defendant guilty of both counts of first degree murder. (R78-79)

At the penalty phase of the trial, the jury recommended the imposition of the death sentence. (R81,81) Following a pre-sentence investigation, the trial court adjudicated the defendant guilty of both counts and imposed a sentence of death on the defendant. (R83-84,87;SR16-19)

The defendant's motion for a new trial was denied. (R85,89)

In a revised opinion filed on December 10, 1981, the Florida Supreme Court affirmed the trial court's judgment and sentence. Specifically, for purposes of this petition, the Florida Supreme Court said that there was no evidence that Christopher tried to stop the police interrogation but continued to talk with them of his own will. Petitioner filed a motion for a rehearing (A10-12), which the court, for purposes of this petition, denied. (A13)

Petitioner now asks this Court to hear his case.

STATEMENT OF THE FACTS

William D. Christopher, was visiting his natural (but illegitimate) daughter, Norma Sands, in Naples, Florida (R688-691) where she had been living with Bertha Skillin, her adopted mother, and Skillin's boyfriend, George Ahern. (R681-684)(Norma had been given up for adoption at birth to Bertha Skillin and her first husband by Patricia Stacks, Norma's natural mother). (R623,636)

Ahern, on numerous occasions, would touch and fondle Norma (age 15), and would enter her room at night and lift up her covers to see if she was wearing any clothing. (R685,720) Understandably, Norma's friends were afraid of Ahern and refused to visit her because he would touch them, also. (R721-722) However, when Norma told Skillin about Ahern's conduct, she failed to do anything about the problem. (R686) Norma also discussed this matter with Patricia Stacks (her natural mother) and Christopher, who became upset with Ahern. (R687,692)

Because of this problem, and because Norma and Christopher loved each other very much, Norma decided to secretly leave Naples with Christopher and return to Memphis, Tennessee, where both Christopher and Patricia Stacks lived. (R693-695) On August 30, 1977, they packed their suitcases and hid them under Norma's bed. (R695)

The next morning, Christopher drove Norma to school and returned home. Later, he was seen with Ahern at a local bank, where Ahern withdrew three hundred dollars to loan Christopher for his trip back to Memphis. (R567,592-596)

About noon, Christopher checked Norma out of school and they headed north. (R698) She noticed blood on Christopher's shoes and asked about it. (R703) Christopher explained that he had confronted Ahern with his knowledge of Ahern's sexual advances toward Norma, that an argument ensued, and that he punched Ahern in the nose, causing it to bleed. (R703)

Later, however, Christopher admitted to Norma that that had not happened. (R705) He told her that Skillin and Ahern were dead. (R705) He told her that after going to the bank with Ahern, he went for some beer while Ahern returned home. (R707) When Christopher returned he noticed some blood on the floor and heard water running in the bathroom. (R707) Ahern told him that Skillin had cut herself and was washing the cut. (R707-708) Christopher went to the kitchen while Ahern went to the bedroom. (R708) Christopher heard a shot from the bedroom (R708), and upon entering he saw Ahern's body sliding from the bed to the floor, a gun in his hand and blood coming from his head. (R708) Christopher, wondering why Skillin had not come, went to the bathroom where he saw her body on the floor. (R708) He discovered she was dead also. (R708) As he stood near Skillin's body, he stepped in some blood. (R708)

Christopher told Norma he panicked and, thinking he might be blamed for the shootings, took the gun and left the house. (R708) He then drove to school and picked up Norma. (R708-709)

While Christopher and Norma were proceeding north, several people in Naples became suspicious. They had not seen Ahern and Skillin for quite sometime; mail was piling up and Skillin was late with her rent. (R363-365,370-372) The police were notified and, upon entering Skillin's residence, they discovered the badly decomposed bodies of Ahern and Skillin. (R381-385,415,419)

During the police investigation of Skillin's residence, Investigator Harold Young answered Skillin's telephone on September 13, 1977. (R627,833) The caller was Patricia Stacks, and she was trying to locate Skillin. (R627,833) From this conversation, Young learned that Norma had lived with Skillin, and that Christopher had been visiting his daughter. (R833-834)

As a result of this conversation, the police began a search for Christopher and Norma Sands. (R834)

Christopher was arrested in Memphis, Tennessee, by that city's T.A.C. Unit (similar to a S.W.A.T. team) on a warrant from Collier County, Florida. (R790,836) Also taken into custody were Pete and Pam Scott (the defendant's half-brother and half-sister) and Norma Sands. (R794-795) Pete and Pam were charged with aiding and abetting after the fact by the Memphis police. (R838)

Investigator Young and five other police officers questioned Christopher at 7:30 p.m. on September 22, 1977. (R840-842) They informed him of his Miranda rights and obtained his taped statement. (R845) Over the next hour he told the officers the same version of the deaths that he had told Norma (i.e. the deaths were a murder-suicide). (R876;TR20-55) The officers, however, repeatedly told Christopher that they did not believe him. (TR56-58,61,63) Christopher maintained his innocence, but kept asking what the police were going to do with Norma, Pete and Pam (R874-875;TR58) because Christopher thought that Norma was being charged with the murder. (R881) Young and Lt. Mills said they did not know what would happen even though the police repeatedly told the defendant that Norma was caught up in this mess and advised the defendant to talk. (R1200-1202;TR58-59,61-65)

Christopher repeatedly asserted that what he had said was the truth. When the police kept badgering him, Christopher finally indicated that he did not have anything more to say. (R1204;TR61,63,64) However, the police continued talking with him. (TR61-68) The tape recorder was finally turned off. (R849;TR69)

After the tape was turned off, the defendant continued his efforts to find out what would happen to his daughter and half-brother and sister. (R1245-1246) Captain Smith, who was

present during the interrogation, admitted at the suppression hearing that there may have been some talk with Christopher that Lt. Mills considered prosecuting Norma. (R1247)

Christopher finally broke down and began a long narrative beginning with Norma's birth. (R850,852) During this statement, he admitted killing Skillin and Ahern. (R851)

After a telephone call to his mother, Christopher gave a second taped statement at 10:25 p.m. (R855-856,876-877) In this statement, he said that, upon returning from dropping Norma off at school, Skillin confronted him with the knowledge that Norma and Christopher intended to leave together. (TR8) She indicated that she would not permit it, and intended to notify the police. (TR8,9) According to this second statement, Christopher shot Skillin when she tried to prevent him from taking Norma, and dragged her body into the bathroom and closed the door. (TR8,10)

When Ahern returned home, Christopher accused Ahern of making sexual advances at Norma and an argument ensued. (TR8,15) Ahern went into the bedroom with Christopher following. (TR8,15) There, according to the second statement, Christopher shot Ahern once. (TR8,15)

After giving this statement, Christopher indicated that he had given it in order to clear Norma, Pete, and Pam. (R1193;TR17) These two statements were admitted into evidence at trial over his objections. (R857-858)

REASON FOR GRANTING THE WRIT

DURING POLICE CUSTODIAL INTERROGATION, A DEFENDANT HAS INDICATED "IN ANY MANNER" HIS DESIRE TO REMAIN SILENT (THUS INVOKING HIS FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION) WHEN HE SAID:
1. "THEN I GOT NOTHING ELSE TO SAY IF YOU'RE ACCUSING ME OF MURDER, THEN TAKE ME DOWN THERE;"
2. "I GOT NOTHING ELSE TO SAY;"
3. "WHAT'S THE NEED OF ME SAYING ANYTHING THEN?"

The issue presented by this case involves a little litigated aspect of an often quoted passage from Miranda v. Arizona, 384 U.S. 436,473-474, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966):

> Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. (Footnote and cite omitted)

After the police arrested Christopher, he initially waived his Miranda rights and the police began questioning him. At first he denied committing the murder. During this part of the questioning the following exchange occurred:

> CHRISTOPHER: Well, save--
>
> YOUNG: Now wait a minute. Yea, I accused you, for we signed a warrant against you.
>
> CHRISTOPHER: Okay.
>
> YOUNG: Ah--
>
> CHRISTOPHER: Then I got nothing else to say. If you're accusing me of murder, then take me down there.
>
> MILLS: You were accused when you come in here. You knew you were accused--
>
> CHRISTOPHER: That's right. That's right.
>
> MILLS: --you knew what you were accused of, and I told you what the girl was accused of, so don't make out like you don't know what you're accused of.
>
> CHRISTOPHER: Oh, ah,--I know what I'm accused of. I know that I'm accused of both murders.
>
> MILLS: I told you awhile ago you were being charged with both murders.
>
> CHRISTOPHER: Okay then. I got nothing else to say.

YOUNG: You mean it's all right as long as we accuse you of one?

MILLS: But all of a sudden when you're accused of two, you don't--

CHRISTOPHER: I'm not saying that, I know that, didn't I tell you awhile ago that I knew that ya, I was accused of both murders?

YOUNG: Yeah. You--you should know.

CHRISTOPHER: Okay then. What's the need of me saying anything then?

MILLS: What are you upset about?

CHRISTOPHER: You ask me? I'm upset about the fact that you're bringing my daughter up here, like I'm using her in this thing.

YOUNG: I'm asking you--

MILLS: I'm asking you to explain her actions in this thing.

(TR64-65)(Emphasis supplied)

On appeal to the Florida Supreme Court, Christopher argued that the underlined portions of the quote indicated he wanted "in any manner" to invoke his Fifth Amendment right to remain silent.[1/] The Florida Supreme Court rejected this argument:

> Turning to the second issue, the admissibility of the confession, we find no evidence that the appellant exercised his right to halt the interrogation. The appellant continued his conversation with the interrogating deputies of his own free will. (Slip opinion at page 3)

The question before this court thus focuses upon the language from the quoted passage in Miranda and invites this Court to consider what it meant in Miranda when it said that interrogation must cease if a suspect invokes his right to remain silent "in any manner." This question has not been addressed by this Court before nor, as far as our research indicates, has

---

1/ Christopher also argued that by implicating his daughter and his brother and sister in the murders, the police unfairly coerced his confession. Bram v. United States, 168 U.S. 532 (1897) That argument was also rejected by the Florida Supreme Court.

any other appellate court discussed the issue. But see United States v. Lopez-Diaz, 630 F.2d 661 (9th Cir. 1980); United States v. Prestigiacomo, 504 F.S. 681 (E.D.N.Y. 1981).

This Court in Fare v. Michael C., 442 U.S. 707, 61 L.Ed.2d 197, 99 S.Ct. 2560 (1979) said that when the juvenile being interrogated in that case asked for his probation officer after being read his Miranda rights, he had not invoked his right to assistance of counsel. The Court, however, also rejected the argument that by asking for his probation officer, Michael C. had invoked "in any manner" his right to remain silent.

> Nor do we believe that a request by a juvenile to speak with his probation officer constitutes a per se request to remain silent. As indicated, since a probation officer does not fulfill the important role in protecting the rights of the accused juvenile that an attorney plays, we decline to find that the request for the probation officer is tantamount to the request for an attorney. And there is nothing inherent in the request for a probation officer that requires us to find that a juvenile's request to see one necessarily constitutes an expression of the juvenile's right to remain silent.

Id., at 723-724.

It is clear from the opinion, however, that interpreting a request for the assistance of a probation officer as a request to remain silent, was a "fall back" position. The primary focus in Fare was whether asking for a probation officer was a request for an attorney, a separate aspect of the protections provided by Miranda. Edwards v. Arizona, __U.S.__ 68 L.Ed.2d 378, 101 S.Ct. ___ (1981)

Other cases in this area do not clearly address the issue presented by this case. Michigan v. Mosely, 423 U.S. 96, 46 L.Ed.2d 313, 96 S.Ct. 321 (1975) focused on whether the police had scrupuously honored Mosely's right to stop interrogation when he had initially said he did not want to talk about a robbery. The next day a different policeman questioned him

about a different crime than the one Mosley had earlier invoked his right to remain silent. In that case, there was no question that Mosley had invoked his right to remain silent.

In Brewer v. Williams, 430 U.S. 387, 51 L.Ed.2d 424, 97 S.Ct. 1232 (1977) the court held that a Sixth Amendment waiver of counsel could not be inferred from the mere response by the accused to overt subtle forms on interrogation or other efforts to elicit incriminating information.

In Rhode Island v. Innis, 446 U.S. 291, 64 L.Ed.2d 297, 100 S.Ct. 1682 (1980) the question was whether Innis was being interrogated when two policemen discussed the location of a shotgun while they and Innis sat in a police car. Again there was no question of whether or not Innis had invoked "in any manner" his right to remain silent.

The issue presented here is different from the cases cited and is an important one in determining what constitutes the fair administration of justice. When the police question a suspect, they have conflicting interests to protect. They are primarily police officers who are commissioned to investigate crime and enforce the law. When they interrogate a suspect, however, they must also protect the rights of the person they are interrogating. That is, they are often in the position of determining whether a suspect has "in any manner" invoked his right to remain silent. At times when the police strongly suspect the person they are interrogating or the crime is especially heinous, the conflict may be ignored in favor of pressing the interrogation. Thus in order to preserve a just system of criminal justice, police, courts, and attorneys need to know what "in any manner" means so that they can fairly resolve the conflict that is inherently present in every interrogation.

This case is the appropriate case to resolve that significant federal question. The Florida Supreme Court said

there was no evidence that Christopher had invoked his right to remain silent because they said he continued the conversation with the deputies of his own will. Yet the underlined portions of the quote from the interrogation is evidence that Christopher's desire to stop the interrogation was ignored by the police. This court should accept certiorari in this case to decide if Christopher ever invoked his right to remain silent.

Alternatively, the Florida Supreme Court's opinion can be read as tacitly agreeing that Christopher had invoked his right to remain silent but had relinquished that right by "continu[ing] his conversations with the interrogating deputies of his own free will." If such is the case, the issue becomes whether there was a knowing and intelligent waiver of a constitutional right and whether the court's holding in Edwards v. Arizona, cited earlier, applies to situations where a suspect invokes, not his right to have counsel present, but his right to remain silent.

> ...the Court has strongly indicated that additional safeguards are necessary when the accused asks for counsel; and we now hold that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges or conversations with the police.

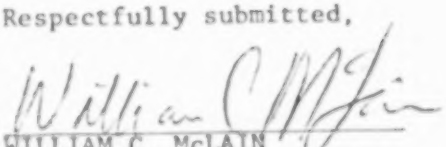
Edwards v. Arizona, __U.S.__, 68 L.Ed.2d 386.

This case, therefore, presents a significant question of federal law for this court to resolve.

CONCLUSION

Petitioner asks this Honorable Court to grant a writ of certiorari in his case.

Respectfully submitted,

BY: 

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